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ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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CHAIRMAN

February 11, 2004

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The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Chairman Donaldson:

Pursuant to Rules X and XI of the House of Representatives and our continuing oversight of national energy policy, we are writing you to request information regarding the Commission's current administration of the Public Utility Holding Company Act of 1935 (PUHCA).

On December 29, 2003, the Securities and Exchange Commission (SEC) upheld a decision by one of its administrative law judges that revoked Enron's intra-state exemption from PUHCA, based upon a finding that its Portland General Electric affiliate doesn't meet the test to qualify for an exemption from the Act due to its ownership of out-of-state facilities and the volume of its power exports (see *In the Matter of the Applications of Enron Corporation*, Release No. 27782, Admin. Proc. File No. 3-10909).

While this decision did not hinge on the issue of whether the parent holding company is, or needs to be, primarily intra-state, we believe that Section 3(a)(1) of PUHCA clearly requires this as well. As the Commission noted in its decision:

"An exemption under Section 3(a)(1) of the Act is available to a public utility holding company if:
'such **holding company**, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominately intrastate in character and carry on their business substantially in a single state in which such holding company and every such subsidiary company thereof are organized.'" (emphasis added)

As you may know, Texas Pacific Group, a Texas-based investment banking firm, has proposed to purchase Portland General Electric from Enron for \$1.25 billion. It would seem to us that the entities resulting from such a transaction would similarly not meet the 3(a)(1) test for an intra-state exemption. Do you agree, and if not why? Is Texas Pacific Group planning to divest the rest of their holdings (which divestiture would be required by Section 11(b)(1)) in order to acquire Portland General Electric?

The Honorable William Donaldson
Page 2

In addition, we have also read press reports that the investment bank Kohlberg, Kravis Roberts Company (KKR) is purchasing UniSource Energy Group for \$853 million. As you know, Unisource is the parent company of Tucson Electric. We understand that KKR, along with Trimaran Capital Partners, L.L.C., already co-owns International Transmission Company (which the two reportedly purchased for \$610 million in 2002). KKR, either directly or through the KKR-owned company Dayton Ventures, also holds shares and serves on the Board of DPL Inc., which in turn owns all of the common stock of the electric utility Dayton Power & Light. Given these diverse holdings how could the purchase of UniSource be permissible under PUHCA when there would be no physical integration -- as would be required under the Act? Please advise us of the standards the Commission would apply in this regard. Please also explain whether KKR's ownership in International Transmission Company and Dayton Ventures is consistent with the requirements of the Act.


Finally, we believe it would be appropriate at this time for the Commission to review all current PUHCA exemptions to see whether they meet the test outlined in the Commission's *Enron* decision, as well as the literal requirements of Section 3(a)(1). Such a review should include, but not be limited to, an evaluation of whether the aforementioned transactions, as well as Berkshire Hathaway's ownership of MidAmerica and Central and Southwest's merger with American Electric Power, are consistent with the test in the *Enron* decision and the requirements of the Act. We request that the Commission report to us no later than Friday, February 20, 2004, on the results of its review, and on any action taken to revoke or amend any of the current exemptions in light of the *Enron* decision and the requirements of PUHCA. We are sure the Commission recognizes that, if the Commission had conducted such a review earlier, Portland General Electric would not now find itself being auctioned off in a bankruptcy court as an asset of the now bankrupt Enron.

Thank you for your assistance and cooperation in this matter. Should you have any questions about this request, please contact us or have your staff contact Consuela Washington and Sue Sheridan with the Committee Democratic staff at 202-225-3641 or Jeff Duncan with Representative Markey's office at 202-225-2836.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER



EDWARD J. MARKEY
MEMBER
SUBCOMMITTEE ON ENERGY AND
AIR QUALITY

cc The Honorable W. J. "Billy" Tauzin, Chairman
Committee on Energy and Commerce